

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
BYRON GUY
ZONING MAP AMENDMENT REPORT (#FZC-14-05)
NOVEMBER 21, 2014

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Larsen Engineering and Surveying, on behalf of Byron Guy for a zoning map amendment in the Highway 93 North Zoning District. The proposed amendment would change the zoning of the subject property from ‘SAG-10 Suburban Agricultural’ to ‘SAG-5 Suburban Agricultural.’

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on December 10, 2014 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the December 10, 2014 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

Byron Guy
PO Box 812
Kalispell, MT 59903

ii. Technical Assistance

Larsen Engineering and Surveying
PO Box 2071
Kalispell, MT 59903

B. Subject Property Location and Legal Description

The subject property is located at 240 Sirucek Lane near Kalispell, MT (see Figure 1 below). The property is approximately 3.75 acres in size and can be legally described as Lot 1A of Guy’s Acre Subdivision in Section 18, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property outlined in yellow



C. Proposed Zoning Map Amendment

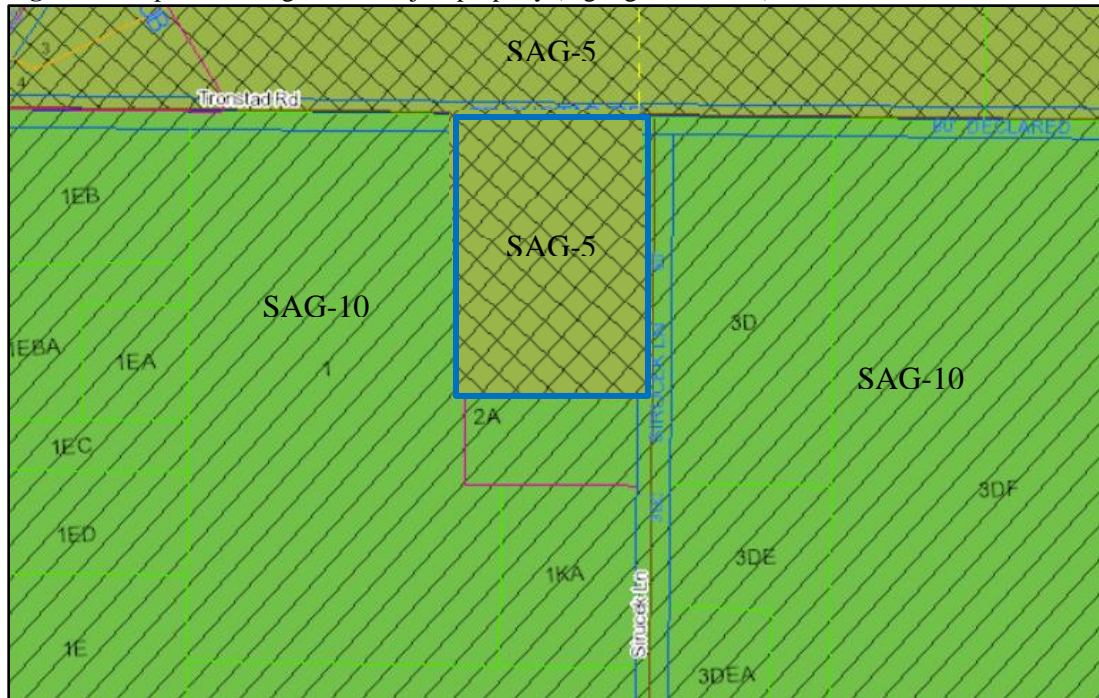
The subject property is located within the Highway 93 North Zoning District and is currently zoned 'SAG-10 Suburban Agricultural' (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested the zoning map amendment for the property to zone it 'SAG-5 Suburban Agricultural.' The SAG-10 designation is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as, 'A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.'

The SAG-5 designation is defined in Section 3.08 FCZR as, 'A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.'

Figure 2: Current zoning applicable to subject property (highlighted in blue)



Figure 3: Proposed zoning on the subject property (highlighted in blue)



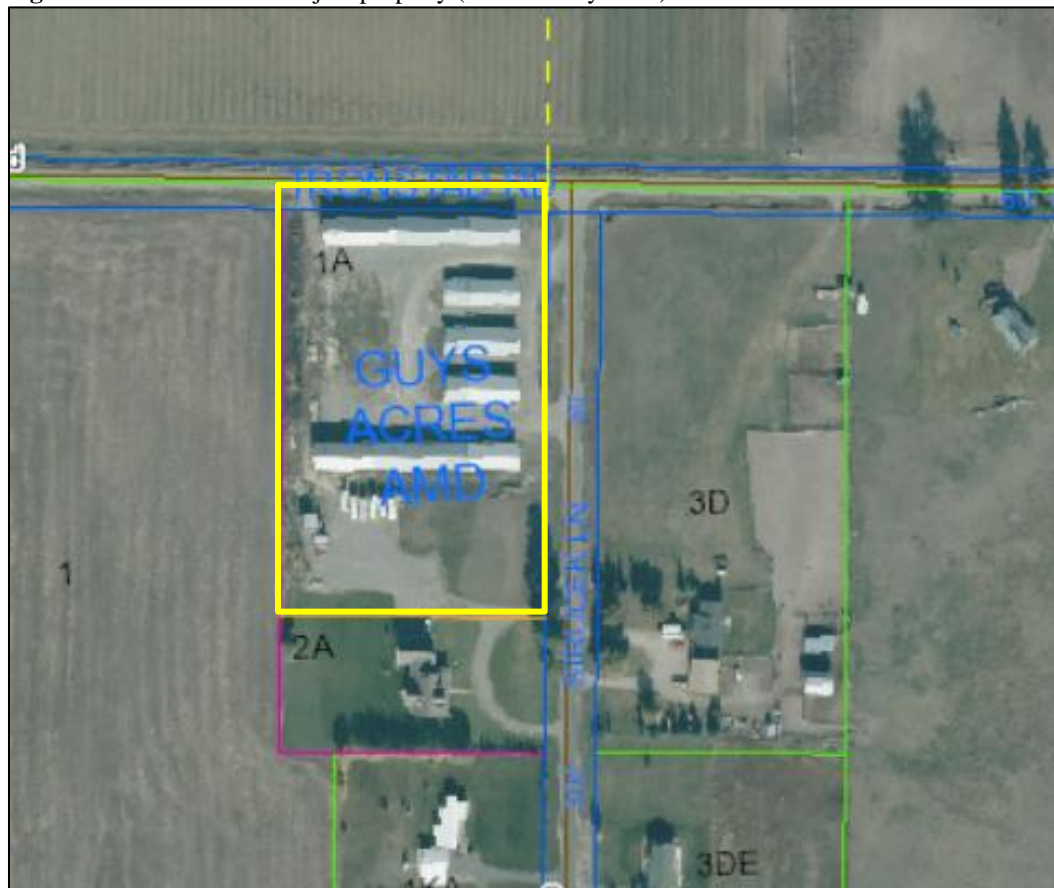
D. General Character of and Reason for Amendment

The property is relatively flat with a few shrubs located on the east side of the property on Sirucek Lane. The application states, “Adjacent to SAG-5. Compatible with nearby surrounding zoning in this general area.”

The subject property currently contains a non-conforming mini-storage. Prior to the adoption of the Highway 93 Zoning District the applicant secured a building permit from the state to construct mini-storage on the property. Per Section 2.07.030 FCZR, *“Any building for which a building permit has been issued or, if a building permit is not required, on-site construction has begun prior to the adoption or amendment of these regulations, or creation of a zoning district to which these regulations apply, and the erection of which is in conformity with the plans submitted and approved for such permit, but does not conform to the provisions of these regulations, is a non-conforming use.”*

The applicant is proposing the zoning map amendment to be able to construct a caretaker’s facility on the subject property. The permitted lot coverage for the existing SAG-10 zone is 20% and the permitted lot coverage for the proposed SAG-5 zone is 25%. The proposed caretaker’s facility along with the existing mini-storage would cover 24% of the lot. If the zone change is approved the applicant would be able to construct the caretaker’s facility and remain under the permitted lot coverage of 25% in the SAG-5 zoning with the issuance of a conditional use permit.

Figure 4: Aerial view of subject property (outlined in yellow)



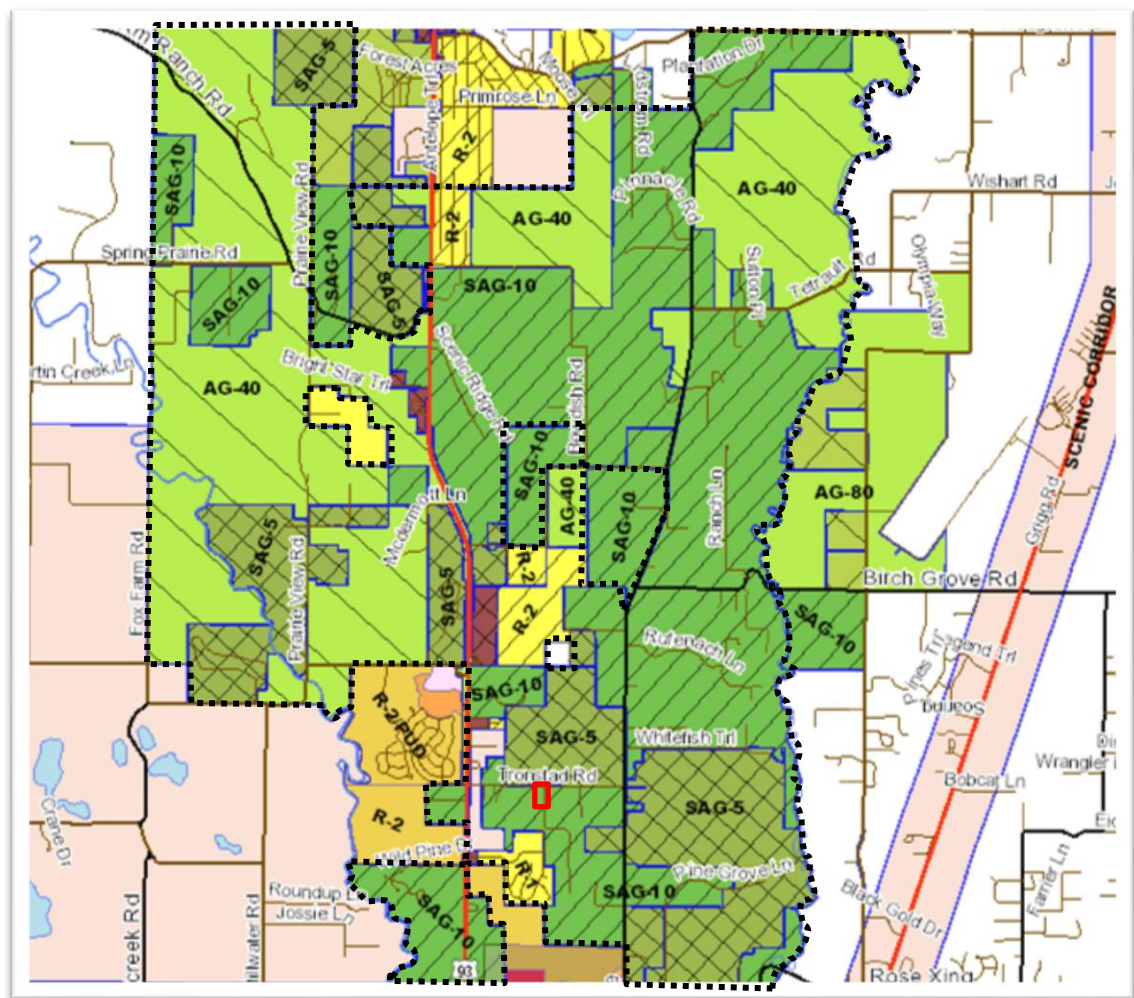
E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Highway 93 North Zoning District and surrounded by agricultural and suburban agricultural zones (see Figure 2). The subject property is bordered on the south, east and west by ‘SAG-10 Suburban

Agricultural’ and the properties to the north are zoned SAG-5. The character of the area surrounding the property is rural residential and agricultural, as illustrated in Figure 4.

The tract to the north of the subject property is 114.7 acres and the property to the northeast is 39.8 acres. The tracts directly to the east range in size 0.35 to 5.05 acres, and average 2.06 acres. The tracts to the southeast average 4.60 acres with most of the lots between 1.0 and 5.0 acres. To the southwest of the subject property the four tracts average 5.23 acres, to the south the tracts average 1.75 acres and to the west the tracts average 1.77 acres. Northwest of the subject property the tracts average 2.38 acres.

Figure 5: Highway 93 North Zoning District (outlined with dashed black line & subject property outlined in red).



When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different

from the uses allowed on surrounding properties in the area. Below is a brief review of the three-part test in relation to this application.

i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.

The intent of the existing 'SAG-10 Suburban Agricultural' zone is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed 'SAG-5 Suburban Agricultural' zone is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use.

The proposed SAG-5 would allow for the same uses as the adjacent SAG-5 zoning to the north of the subject property and similar uses to the existing SAG-10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. *'Dairy products processing, bottling, and distribution'* and
2. *'Ranch Employee Housing.'*

There are three permitted uses in the SAG-10 zone that are allowed with a conditional use permit in the SAG-5 zone:

1. *'Cellular tower,'*
2. *'Riding academy, rodeo arena,'* and
3. *'Stable, public.'*

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within SAG-10:

1. *'Recreational facility, high impact,'* and
2. *'Recreational vehicle park.'*

Another difference between the existing and proposed zoning is minimum lot area, in the existing SAG-10 zoning the minimum lot area is 10 acres while the proposed SAG-5 zone has a 5 acre minimum lot area.

The general character of the surrounding area is agricultural and single family residential. The neighboring properties to the south and east are single family residential and the land to the north and west is generally undeveloped. The proposed zoning map amendment, if approved, would allow for uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing agricultural zoning and existing on surrounding properties.

ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.

Using standard ArcGIS software staff determined that the subject property is located within an SAG-10 zoning district approximately 487.73 acre in size. The area of the proposed zoning map amendment is 3.75 acres or 0.7% of the existing SAG-10 district. Directly north of the subject property is a SAG-5 zoning district which is approximately 1088.68 acres in size. If the zone change is approved the total SAG-5 district to the north would be enlarged and become approximately 1092.43 acres. So even though the property is only 3.75 acres and applies to one

land owner the zone change would expand the existing SAG-5 designation currently north of the subject property. Therefore, overall neither existing zone, nor the proposed zone applies to a small number of landowners.

iii. The Zoning Is Designed To Benefit Only One Or A Few Landowners At The Expense Of The Surrounding Landowners Or The General Public And, Thus, Is In The Nature Of Special Legislation.

The subject property is currently owned by a single landowner however, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning (*'Dairy products processing, bottling, and distribution'* and *'Ranch Employee Housing'*) and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 (*'Cellular tower,' 'Riding academy, rodeo arena,' and 'Stable, public'*). Additionally only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zoning (*'Recreational facility, high impact,' and 'Recreational vehicle park'*).

As previously stated the subject property is adjacent to a large SAG-5 district and the same uses that are allowed within the adjacent SAG-5 to the north would be allowed within the proposed SAG-5. The zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing agricultural zoning and the suburban agricultural zoning of the surrounding area.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #1: The proposed zoning map amendment does not appear to constitute spot zoning because the proposed zone change would allow for the same uses permitted throughout the existing SAG-5 zoning to the north, similar uses to what is allowed within the existing SAG-10, does not create a zone that applies to a small number of landowners or small area, maintains the rural character of the overall zoning district and would be contiguous to an existing SAG-5 zone.

F. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Kalispell School District Flathead High School District
Fire:	West Valley Rural Fire District
Police:	Flathead County Sheriff's Office

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on November 19, 2014. Legal notice of the Planning Board public hearing on this application was published in the November 23, 2014 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on October 6, 2014:

- Bonneville Power Administration
 - Reason: BPA has requested that they receive a copy anytime agency referrals are sent.
- City of Kalispell Planning Department
 - Reason: The subject property is located outside of but near the City of Kalispell's planning jurisdiction.
- Flathead City-County Health Department; Environmental Health Services
 - Reason: Increased development as a result of the zoning map amendment may necessitate review by the Department.
- Flathead County Public Works/Flathead County Road Department
 - Reason: The zone change request has the potential to impact County infrastructure.
- Flathead County Sheriff
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing services.
- Flathead County Solid Waste
 - Reason: The type and amount of solid waste resulting from uses permitted within the proposed zoning map amendment area could have an impact on existing public services.
- Flathead County Weeds and Parks Department
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.

- Flathead High School District
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.
- Kalispell School District
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.
- West Valley Fire District
 - Reason: The subject property is located within the jurisdiction of the local fire district and increased development as a result of the zoning map amendment could impact the level of service available.

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for December 10, 2014 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: "BPA does not have any objections to the approval of this request at this time." Email dated October 9, 2014.
- Flathead County Solid Waste District
 - Comment: "The district views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by the by a private licensed hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission licensed hauler in this area."
- Flathead County Road & Bridge Department
 - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated October 8, 2014.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed "by-right." A build-out analysis is performed to examine the maximum potential impacts of full build-out of those "by-right" uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not "best-case" or "worst-case" scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to

neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from ‘SAG-10 Suburban Agricultural.’ SAG-10 is defined in Section 3.07 FCZR as, *‘A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’* The following is a list of permitted uses in an SAG-10 zone:

1. Agricultural/horticultural/silvicultural use.
2. Cellular tower.
3. Class A and Class B manufactured home.
4. Cluster housing.
5. Dairy products processing, bottling, and distribution.
6. Day care home.
7. Dwelling, single-family.
8. Guest house.
9. Home occupation.
10. Homeowners park and beaches.
11. Livestock
12. Nursery, landscaping materials.
13. Park and publicly owned recreational facility.
14. Produce stand.
15. Public transportation shelter station.
16. Public utility service installation.
17. Ranch employee housing.
18. Riding academy, rodeo arena.
19. Stable, public and private.

The following uses are listed as conditional uses in an ‘SAG-10’ zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker’s facility.*
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Community center building operated by a non-profit agency.
10. Community residential facility.**
11. Contractor’s storage yard.*

12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Golf course.
16. Golf driving range.
17. Kennel, commercial.*
18. Manufactured home park.
19. Recreational facility, low-impact.
20. School, primary and secondary.
21. Temporary building or structure.*
22. Water and sewage treatment plant.
23. Water storage facility.

The bulk and dimensional standards under SAG-10 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-10 zoning requires a minimum lot area of 10 acres. The subject property totals 3.75 acres and under the proposed SAG-10 zoning no new lots could be created.

ii. **Proposed Zoning**

As previously stated, the applicant is proposing ‘SAG-5 Suburban Agricultural’ zoning. SAG-5 is defined in Section 3.08.010 FCZR as, “*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*” The following is a list of permitted uses in an SAG-5 zone:

1. Agricultural/horticultural/silvicultural use.
2. Class A and Class B manufactured home (See Chapter VII – Definitions).
3. Cluster housing (See Chapter V – Performance Standards).
4. Day care home.
5. Dwelling, single-family.
6. Guest house.
7. Home occupation.
8. Homeowners park and beaches.
9. Livestock
10. Nursery, landscaping materials.
11. Park and publicly owned recreational facility.
12. Produce stand.
13. Public transportation shelter station.

14. Public utility service installation.
15. Stable, private.

The following uses are listed as conditional uses in an 'SAG-5' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker's facility.*
7. Cellular tower.*
8. Cemetery, mausoleum, columbarium, crematorium.
9. Church and other place of worship.
10. Community center building operated by a non-profit agency.
11. Community residential facility.**
12. Contractor's storage yard (See Chapter IV – Conditional Use Standards).*
13. Dwelling, family hardship.*
14. Electrical distribution station.
15. Extractive industry.
16. Golf course.
17. Golf driving range.
18. Kennel, commercial.
19. Manufactured home park.
20. Recreational facility, high-impact.
21. Recreational facility, low-impact.
22. Recreational vehicle park.
23. Riding academy and rodeo arena.
24. School, primary and secondary.
25. Stable, public.
26. Temporary building or structure.*
27. Water and sewage treatment plant.
28. Water storage facility.

The bulk and dimensional standards under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-5 zoning requires a minimum lot area of 5 acres. The subject property totals 3.75 acres and under the proposed SAG-5 zoning no additional lots could be created.

In summary, the bulk and dimensional requirements are the same from SAG-10 to SAG-5, the zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing SAG-10 and SAG-5 zoning and no additional lots could be created under the current SAG-10 or proposed SAG-5 zone.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed Suburban Agricultural zoning classification would appear to comply with the current Suburban Agricultural designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Therefore, staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.
- ❖ **G.4** – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.
 - The application states, "The SAG-5 designation allows for agricultural and forestry and provides the land owners with more flexibility when it comes to a minimum lot area and lot coverage." The property is not

currently being used for farming as it is built out with non-conforming mini-storage.

- ❖ **G.8** – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.
 - The SAG-5 designation would allow for densities of 1 dwelling unit per 5 acres and would likely not require public services. The subject property is currently less than 5 acres and uses permitted in SAG-5 are similar to uses allowed in the current and surrounding SAG-10.
- ❖ **G.31** – Growth that does not place unreasonable burden on the school district to provide quality education.
 - The applicant states, “because of the size of the existing applicant’s property of 3.75 acres, it can be further subdivided, so the impact to the schools would be minimal.” Further discussion is contained below in this report on the adequate provision of schools below.
- ❖ **G.32** – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.
- ❖ **G.33** – Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.
 - This report contains discussion on the adequacy of emergency service below.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Suburban Agriculture’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the West Valley Fire District and the nearest fire and emergency response center is located approximately 1 mile southeast of the property on Whitefish Stage. The West Valley Fire Department would respond in the event of a fire or medical emergency. The West Valley Fire Department did not provide comments on this proposal. The application states, “It appears the West Valley Fire Department is well equipped with manpower and equipment to provide emergency services to this proposed property. With the fact that the property will be limited to a large 5 acres density, can’t be further subdivided and is void of trees it appears that there is adequate safety from fire danger.”

The subject property is not located within the Wildland Urban Interface WUI or within a fire district priority area and the proposed SAG-5 zoning will not

increase density as the property is already under the minimum lot size of the SAG-5 zoning.

The subject property has existing access onto Sirucek Lane, a 20-foot wide two-lane paved private road. The property is also bordered to the north by Tronstad Road. Tronstad Road is a 20-foot wide two-lane paved local county road within a 60 foot easement. The road appears adequate to provide ingress and egress for emergency services.

The subject property is flat and relatively open. According to FEMA FIRM Panel 30029C1415G, the property is located within an unshaded Zone X an area determined to be outside the 0.2% annual chance floodplain. There is a low chance of flooding on the subject property.

Finding #3: The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, will not allow for additional density, is located approximately 1 mile from the nearest fire station and is not in the 100 year floodplain.

2. Promote public health, public safety, and general welfare;

The property is located within the West Valley Fire District and about 1 mile northwest of the nearest fire and emergency response center located on Whitefish Stage. The West Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Tronstad Road appears adequate to provide ingress and egress for emergency services which would help to ensure adequate public health and safety.

According to the applicant, "The area is not mapped as a Wildland Urban Interface wildfire priority. The fact that property is void of trees and already developed with mini-storage units would indicate minimal impact to wildfire, especially with the low density proposed with 5 acre lot size. The low SAG-5 acre designation will promote the public health, safety and general welfare."

The intent of the existing SAG-10 zone is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed SAG-5 zone is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use.

The proposed SAG-5 would allow for the same uses as the adjacent SAG-5 zoning to the north of the subject property and similar uses to the existing SAG-10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. *'Dairy products processing, bottling, and distribution'* and
2. *'Ranch Employee Housing.'*

There are three permitted uses in SAG-10 that are allowed with a conditional use permit in SAG-5:

1. *'Cellular tower,'*
2. *'Riding academy, rodeo arena,'* and

3. *'Stable, public.'*

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within the SAG-10 zoning:

1. *'Recreational facility, high impact,'* and
2. *'Recreational vehicle park.'*

Another difference between the existing and proposed zoning is minimum lot area, in the existing SAG-10 zoning the minimum lot area is 10 acres while the proposed SAG-5 zone has a 5 acre minimum lot area.

Finding #4: The proposed amendment would does not appear to have a negative impact on public health, safety and general welfare because the property is served by the Flathead County Sheriff, the West Valley Fire Department, and future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 zoning.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The minimum lot size in the current SAG-10 zoning designation is 10-acres and the minimum lot size in the proposed SAG-5 is 5-acres. Because the subject property is currently 3.75 acres in size it could not be further subdivided under the current or proposed zoning designation. Therefore, no additional students would be generated, and the demand on the parks, water, sewerage and other public requirements would likely not increase as a result of this proposal.

The application states that the subject property will be serviced by individual sewer and water systems. The applicant will be required to work with Flathead City-County Health Department to develop an on-site well and sewer system to meet the needs of any future development. No comments were received from the Flathead City-County Health Department.

Primary access to the property is currently off Sirucek Lane via Tronstad Road. Sirucek Lane is a 20-foot wide two-lane paved private road within a 30 to 60 foot easement. Tronstad Road is a 20-foot wide two-lane paved local county road within a 60 foot easement. Comments received from the Flathead County Road and Bridge Department stated, "At this point the County Road Department does not have any comments on this request." The average daily traffic is not expected to increase because the lot is currently under the minimum lot size of both the proposed zoning designation and the existing zoning designation.

Finding #5: The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the subject property is currently 3.75 acres in size and could not be further subdivided under the current or proposed zoning designation, the County Road Department had no comments regarding this proposal and any new development would require review from the Flathead City-County Health Department for water and wastewater.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The minimum lot area for the proposed SAG-5 zone is 5 acres and the minimum lot area for the existing SAG-10 zone is 10 acres. The density will not change even with a change to the proposed SAG-5 zoning because the lot is currently under the minimum lot size at 3.75 acres in size for both SAG-10 and SAG-5 zone. The maximum building height within the proposed SAG-5 zone is 35 feet which is the same as the existing SAG-10. The permitted lot coverage is 20% for the SAG-10 zoning classification and 25% for the proposed SAG-5 zoning classification.

The application states, “The proposed SAG-5 zoning designation has a minimum lot size of 5 acres and has identical setbacks to the AG-10 that the applicants propose to replace. The SAG-5 zoning designation matches the existing SAG-5 zoning designation adjacent and directly north of this proposal” The bulk and dimensional requirements under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The setbacks for the proposed zoning classification are identical to those of the current zoning. The bulk and dimensional requirements for the SAG-5 designation have been established to provide for a reasonable provision of light and air.

Finding #6: The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation and the lot could not be further subdivided under the proposed zoning.

2. The effect on motorized and non-motorized transportation systems;

Primary access to the property is currently off Sirucek Lane via Tronstad Road. Sirucek Lane is a 20-foot wide two-lane paved private road within a 30 to 60 foot easement. Tronstad Road is a local county road within a 60 foot easement. According to the applicant, “The road network provides good access for vehicles and with the very low traffic volume of 646 vpd according to Flathead County Road Dept. counts on 10/05/07.”

Traffic counts from the Flathead County Road and Bridge Department indicate 646 vehicle trips per day East of U.S. Highway 93 and 738 vehicle trips per day west of Whitefish Stage (counts taken October 5th through the 9th of 2007). The subject property could not be further divided as it is under the

minimum lot size for both the existing and proposed zoning. Based on projected land uses arising from the proposed zone change this proposal would likely generate no additional daily traffic. Comments received from the Flathead County Road and Bridge Department stated, “At this point the County Road Department does not have any comments on this request.” It is anticipated that because the subject property is currently under the minimum lot size of both the existing SAG-10 zoning and SAG-5 zoning there will be minimal impact on motorized traffic.

There is no existing bike/pedestrian facilities currently located along Sirucek Lane or Tronstad Road and no future bike/pedestrian trail is identified by the Flathead County Trails Plan for Sirucek Lane or Tronstad Road. It is anticipated that because the subject property is currently under the minimum lot size of both the existing and proposed zoning there will be minimal impact on non-motorized traffic.

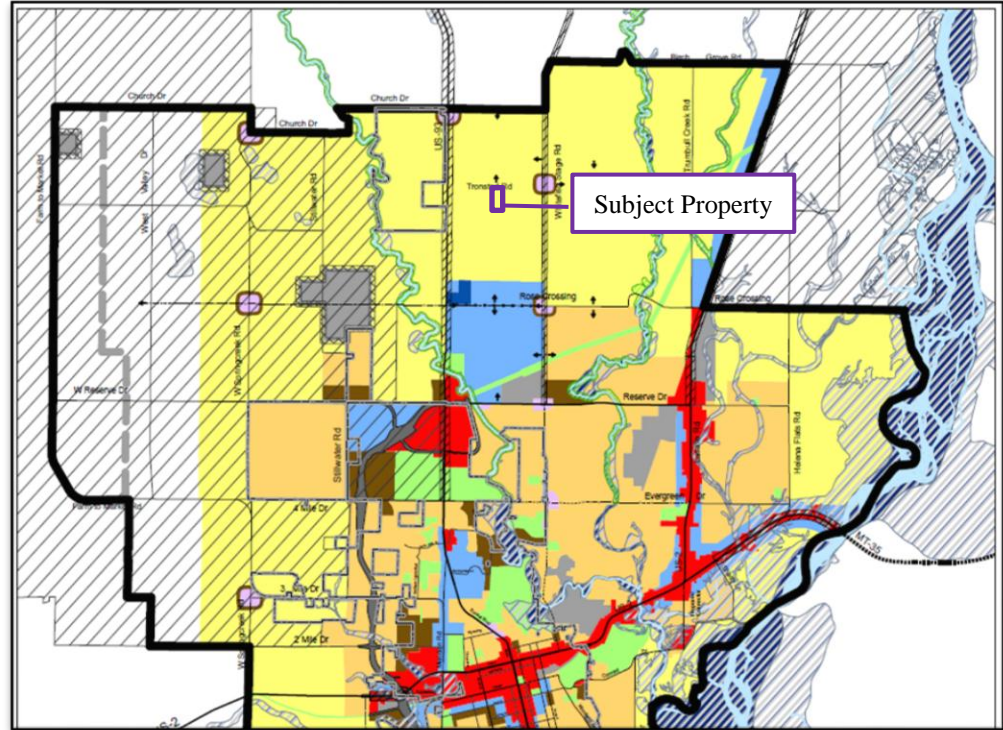
Finding #7: Effects on motorized and non-motorized transportation systems will be minimal because the subject property is currently under the minimum lot size of both the existing SAG-10 zoning and proposed SAG-5 zoning and would likely generate minimal additional motorized and pedestrian traffic.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

Kalispell, the nearest municipality to the subject property, is located about 0.5 miles west of the property. According to the application, “The existing and proposed zoning designation of the applicant’s property is both “Rural” in land use and density and is consistent with the designated zoning directly north of the subject property. This appears to be in transition to smaller zoning district sizes, especially with smaller lot sizes of the Silverbrook development in the City of Kalispell. Therefore, lowering the lot size zoning designation from SAG-10 to SAG-5 appears to be more consistent in size with smaller lot size of the Silverbrook Development of the City of Kalispell to the west of Highway 93.”

The City of Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2003 includes the subject property. The Kalispell Growth Policy Planning Area Map designated the property as “Suburban Residential.” According to the Kalispell Growth Policy the “Suburban Housing” states, “a. *Densities should be appropriate to the limitations of the particular site, and should not exceed two or four dwellings per gross acre. B. The suburban residential designation is intended to reduce density and development impacts in sensitive areas and existing rural neighborhoods.*” The “Suburban Residential” on the map would seem to generally correspond with the “Suburban Housing” designation within the text of the Growth Policy. The proposed SAG-5 zoning would not exceed two to four dwelling per gross acre. Additionally comments were sought from the City of Kalispell but no comments were received. It appears that the proposed SAG-5 zoning designation would be compatible with urban growth in the vicinity of Kalispell.

Figure 6: Northern portion of City of Kalispell Growth Policy Future Land Use Map (Property outlined in purple)



Finding #8: The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comments were received from the City of Kalispell to indicate concern, it is less dense than the Kalispell designation of “Suburban Housing” and it is already built out.

4. The character of the district(s) and its peculiar suitability for particular uses;

The Highway 93 North Zoning District is mostly a mix of agricultural, suburban agricultural and residential zoning, with some business zoning along Highway 93. The property is currently contains 5 mini-storage buildings. The surrounding properties to the south and east appear to be used for single family residential. The properties to the west and north are vacant tract land which appears to be in agricultural production. The application states, “The property is consistent with the current SAG-5 zoning adjacent and directly north of this proposal. Permitted and conditional uses are quite similar between the SAG- 5 and SAG-10 zoning districts.”

The subject property currently contains a non-conforming mini-storage. Prior to the adoption of the Highway 93 Zoning District the applicant secured a building permit from the state to construct mini-storage on the property. Per Section 2.07.030 FCZR, “Any building for which a building permit has been issued or, if a building permit is not required, on-site construction has begun prior to the adoption or amendment of these regulations, or creation of a

zoning district to which these regulations apply, and the erection of which is in conformity with the plans submitted and approved for such permit, but does not conform to the provisions of these regulations, is a non-conforming use.” Mini-storage is not listed as a permitted or conditional use within either the existing SAG-10 or the proposed SAG-5 zoning and would continue to be legally non-conforming if the zone change is approved.

As previously discussed, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning (*‘Dairy products processing, bottling, and distribution’* and *‘Ranch Employee Housing’*) and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 (*‘Cellular tower,’ ‘Riding academy, rodeo arena,’* and *‘Stable, public’*). Additionally only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zoning (*‘Recreational facility, high impact,’* and *‘Recreational vehicle park’*). All other uses are the same between the SAG-10 and SAG-5 zoning and the proposed SAG-5 zone would allow for the same uses as the SAG- 5 to the north.

The tract to the north of the subject property is 114.7 acres and the property to the northeast is 39.8 acres. The tracts directly to the east range in size 0.35 to 5.05 acres, and average 2.06 acres. The tracts to the southeast average 4.60 acres with most of the lots between 1.0 and 5.0 acres. To the southwest of the subject property the four tracts average 5.23 acres, to the south the tracts average 1.75 acres and to the west the tracts average 1.77 acres. Northwest of the subject property the tracts average 2.38 acres. Many of the neighboring parcels have smaller lot sizes than what is permitted in the proposed SAG-5 zoning and similar to the existing lot size of the subject property.

Finding #9: The character of the proposed zoning map amendment appears suitable for the particular district because the uses permitted and conditionally permitted within the SAG-5 zoning are similar to what is allowed and existing in the current SAG-10 zoning and neighboring SAG-5 zoning, and the adjacent parcels are smaller than what is permitted in the proposed SAG-5 zoning and similar to the existing lot size of the subject property.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject property is located within the Highway 93 North Zoning District and surrounded by agricultural and suburban agricultural zones (see Figure 2). The subject property is bordered on the south, east and west by ‘SAG-10 Suburban Agricultural’ and the properties to the north are zoned SAG-5. The character of the area surrounding the property is rural residential and agricultural. According to the applicant, “The permitted and conditionally permitted uses of the proposed zoning designation of the SAG-5 are very similar to the existing SAG-10 permitted and conditional uses. [...]. The proposed zoning designation will be consistent with the existing SAG-5

zoning directly north and adjacent to this proposal.” The uses allowed within the existing SAG-10 and adjacent SAG-5 designations are similar to what is allowed within the proposed SAG-5 zone. The proposed requested zoning amendment appears to conserve the value of buildings and encourage the most appropriate use of the land throughout the jurisdictional area because the uses permitted would be the same as the uses permitted in the neighboring SAG-5 and SAG-10.

Finding #10: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the surrounding SAG-10, the same uses as the adjacent SAG-5 designation and the character of the area surrounding the property is rural residential and agricultural which is in line with the proposed SAG-5 zone.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell, the city limits of which are located approximately 0.5 miles west of the property. The City of Kalispell Planning Department was sent an agency referral but has not provided comment on this proposal.

The closest zoning within the City of Kalispell appears to be R-2/PUD and R-2 approximately 0.5 miles to the west of the property. According to Chapter 27.05 of the Kalispell Zoning Ordinance the R-2 district is, *‘A district intended to provide adequate lot areas for lower density residential development; should have good thoroughfare access, and be in proximity to community and neighborhood facilities, i.e., schools, parks, shopping areas, etc. This development will normally require all public utilities. This zoning district would typically be found in areas designated as suburban residential on the Kalispell Growth Policy Future Land Use Map.’* The minimum lot size in R-2 is 10,000 square feet which is less than the minimum lot sizes of the existing SAG-10 and the proposed SAG-5. The R-2 district does not allow for many of the uses allowed in the existing SAG-10 or proposed SAG-5, such as agriculture, stables, rodeo arenas, riding academies, airfield, kennels, etc.

Many of the recent properties annexed by the City of Kalispell have been zoned PUDs. If the neighboring properties were annexed into the city, based on recent trends, it would likely be zoned PUD. PUDs allow for greater flexibility and multiple uses. According to the Kalispell Zoning Ordinance, a PUD (Planned Unit Development) District, *“shall serve as an overlay zoning district. It shall function in concert with one or more of the underlying zones to provide a comprehensive, integrated development plan which will serve to modify the underlying zone and, where appropriate, subdivision standards with the intent of providing flexibility of architectural design and density as well as providing the option to mix land uses and densities while preserving and enhancing the integrity*

and environmental values of an area.” Because of the PUD overlay, it is difficult to identify the precise zoning requirements for a subject property.

The city of Kalispell does not have a suburban agricultural zone and the R-1 zone which allows for agricultural and horticultural uses has a minimum lot size of 20,000 square feet. The R-1 zone does not allow for many of the uses in SAG-5 or SAG-10, such as a stable, rodeo arena, riding academy, kennel etc. Both the proposed SAG-5 and existing SAG-10 have minimum lots sizes much larger than the minimum lot size of an R-1 or the nearby R-2 zoning. Because the City does not have suburban residential zoning that accommodates larger lots or many of the uses allowed in SAG-5, the amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Kalispell.

Finding #11: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the City does not have suburban residential zoning that accommodates larger lots or allow many uses allowed in the proposed SAG-5, such as stables, rodeo arenas, riding academies, airfield, or kennels.

V. SUMMARY OF FINDINGS

- 1) The proposed zoning map amendment does not appear to constitute spot zoning because the proposed zone change would allow for the same uses permitted throughout the existing SAG-5 zoning to the north, similar uses to what is allowed within the existing SAG-10, does not create a zone that applies to a small number of landowners or small area, maintains the rural character of the overall zoning district and would be contiguous to an existing SAG-5 zone.
- 2) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Suburban Agriculture’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
- 3) The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, will not allow for additional density, is located approximately 1 mile from the nearest fire station and is not in the 100 year floodplain.
- 4) The proposed amendment would does not appear to have a negative impact on public health, safety and general welfare because the property is served by the Flathead County Sheriff, the West Valley Fire Department, and future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 zoning.
- 5) The proposed amendment would facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements because the subject property is currently 3.75 acres in size and could not be further subdivided under the current or proposed zoning designation, the County Road Department had no comments regarding this proposal and any new development would require review from the Flathead City-County Health Department for water and wastewater.

- 6) The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation and the lot could not be further subdivided under the proposed zoning.
- 7) Effects on motorized and non-motorized transportation systems will be minimal because the subject property is currently under the minimum lot size of both the existing SAG-10 zoning and proposed SAG-5 zoning and would likely generate minimal additional motorized and pedestrian traffic.
- 8) The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comments were received from the City of Kalispell to indicate concern, it is less dense than the Kalispell designation of “Suburban Housing” and it is already built out.
- 9) The character of the proposed zoning map amendment appears suitable for the particular district because the uses permitted and conditionally permitted within the SAG-5 zoning are similar to what is allowed and existing in the current SAG-10 zoning and neighboring SAG-5 zoning, and the adjacent parcels are smaller than what is permitted in the proposed SAG-5 zoning and similar to the existing lot size of the subject property.
- 10) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the surrounding SAG-10, the same uses as the adjacent SAG-5 designation and the character of the area surrounding the property is rural residential and agricultural which is in line with the proposed SAG-5 zone.
- 11) The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the City does not have suburban residential zoning that accommodates larger lots or allow many uses allowed in the proposed SAG-5, such as stables, rodeo arenas, riding academies, airfield, or kennels.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with most the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM